

STATE OF NEW YORK
SUPREME COURT: COUNTY OF NIAGARA

PB-4 Doe, a childhood victim of sexual assault,

Plaintiff,

vs.

THE DIOCESE OF BUFFALO, N.Y., INC,
ROMAN CATHOLIC CHURCH OF THE
SACRED HEART, and ST. RAPHAEL ROMAN
CATHOLIC PARISH,

Defendants.

SUMMONS

Index No.:

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: New York, New York
September 9, 2019

Yours, etc



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COMPLAINT

Index No.:

Plaintiff PB-4 Doe, by his undersigned attorneys, for his Complaint, alleges on personal knowledge as to himself and on information and belief as to other matters, as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PB-4 Doe was sexually abused, assaulted and molested by Father Michael Freeman ("Fr. Freeman") and Father Bernard Mach ("Fr. Mach") -- priests hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants, the Diocese of Buffalo, N.Y. and the Roman Catholic Church of the Sacred Heart in Niagara Falls.
3. The sexual abuse of Plaintiff began when he was about 15 years old and continued for approximately two years.
4. Despite years of refusal to publically address rampant child abuse by priests, Defendant the Diocese of Buffalo recently published a long list of "priests with substantiated claims of sexual abuse of a minor." That list expressly includes both Fr. Freeman and Fr. Mach, who victimized many children.

5. In fact, the Roman Catholic Church and Defendants have long known that substantial numbers of priests throughout history, and up to and including the present day, violate their vows or promises of celibacy and otherwise misbehave by soliciting sexual contact with parishioners, in particular children like Plaintiff who are entrusted to their spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

6. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Fr. Freeman and Fr. Mach, permitted the abuse to occur, neglected to adequately supervise Fr. Freeman and Fr. Mach, failed to timely investigate Fr. Freeman's and Fr. Mach's misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Fr. Freeman's and Fr. Mach's sexual assault of Plaintiff and his consequential injuries and damages.

PARTIES

7. Plaintiff is an individual who resides in the State of Oregon. At the time of the events complained of, he was a minor residing in Niagara County, N.Y.

8. Plaintiff was born in 1964.

9. Defendant The Diocese of Buffalo, N.Y., Inc. ("Diocese") is a New York not-for-profit corporation, organized pursuant to the laws of the State of New York, and which operated at all relevant times in Niagara County, New York, with its principal place of business at 795 Main Street, Buffalo, New York 14206.

10. At all relevant times the Diocese oversaw, managed, controlled, directed and operated parishes, churches and schools for minor children within the Diocese.

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11. Defendant Roman Catholic Church of the Sacred Heart ("Sacred Heart") was a not-for-profit corporation organized pursuant to the laws of the State of New York and at all relevant times was located in Niagara County, N.Y., at 1112 South Ave, Niagara Falls, New York 14305.

12. Defendant St. Raphael Roman Catholic Parish ("St. Raphael") is and was a not-for-profit corporation organized pursuant to the laws of the State of New York, and at all relevant times was and is located at 3840 Macklem Avenue, Niagara Falls, New York 14305.

13. In or about March 2008, Defendant Sacred Heart merged with another parish within the Diocese, known as St. Teresa of the Infant Jesus. The two merged parishes formed St. Raphael. Upon information and belief, St. Raphael assumed some or all of the liabilities and/or assets of Sacred Heart.

14. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and operated Defendant Sacred Heart and Defendant St. Raphael.

15. At all relevant times, Defendant Diocese owned the premises where Defendant Sacred Heart and Defendant St. Raphael were located.

16. At all relevant times, Defendant Diocese oversaw, managed, controlled, directed and assigned priests and lay teachers to work in parishes, churches and schools that were under the authority of the Diocese, including Defendant Sacred Heart and Defendant St. Raphael.

FACTUAL ALLEGATIONS

17. At all relevant times, Plaintiff and his family were parishioners of Defendant Sacred Heart.

18. At all relevant times, Fr. Freeman was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendant Sacred Heart.

19. At all relevant times, Fr. Freeman was under the direct supervision and control of the Defendant Diocese and Defendant Sacred Heart. His assigned duties included, *inter alia*, serving as priest and as pastor. His duties also included interacting with, mentoring and counseling children.

20. In or about November 1981, Fr. Freeman was abruptly transferred away from Sacred Heart. Freeman was replaced by Father Bernard Mach ("Mach").

21. At all relevant times, Fr. Mach was a Roman Catholic priest employed by Defendant Diocese and assigned to Defendant Sacred Heart.

22. At all relevant times Fr. Mach was under the direct supervision and control of Defendant Diocese and Defendant Sacred Heart. Fr. Mach's assigned duties included, *inter alia*, serving as priest and associate pastor. His duties also included interacting with, mentoring and counseling children.

23. At all relevant times Defendants authorized Fr. Freeman and Fr. Mach to be alone with children, including Plaintiff, and to have unfettered and unsupervised access to them.

24. Defendants authorized Fr. Freeman and Fr. Mach to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.

25. Defendants required students, like Plaintiff, to accept discipline and instruction from clergy in their employ, including Fr. Freeman and Fr. Mach, and to obey their orders.

26. Plaintiff was raised as a Catholic, and at all relevant times had developed a reverence, respect and/or fear for the Catholic Church and its clergy.

27. Beginning in or about 1980, and repeatedly during the approximate period that Plaintiff was in 9th and/or 10th grades, Fr. Freeman engaged in unpermitted, forcible and harmful

sexual contact with Plaintiff, and otherwise sexually abused him. This sexual abuse took place in the Sacred Heart rectory and/or other areas owned by Defendants.

28. Beginning in or about 1981 – 1982, during the approximate period when plaintiff was in the 11th and/or 12th grades, Fr. Mach engaged in unpermitted, forcible and harmful sexual contact with Plaintiff, and otherwise sexually abused him. This sexual abuse took place in the Sacred Heart rectory and/or other areas owned by Defendants.

29. In his efforts to groom Plaintiff into sexual submission, Fr. Mach illegally plied Plaintiff, a minor, with alcohol.

30. Fr. Mach threatened Plaintiff never to divulge his sexual misconduct, or Plaintiff would “go to hell.”

31. Plaintiff’s relationship to Defendants as a vulnerable child, and the culture of the Catholic Church which Defendants endorsed, put pressure on Plaintiff not to report the sexual molestation and abuse he endured at the hands of clergy and lay teachers in Defendants’ employ.

32. Defendants knew or should have known that Fr. Freeman and Fr. Mach were dangers to minor boys like Plaintiff, before the sexual abuse of Plaintiff occurred.

33. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to the abuse of Plaintiff, and communicated as much with all levels of Church hierarchy including bishops and other Diocesan leaders. Over the centuries, various Popes passed Church decrees and legislation condemning such offenses, including a clerical crime known as “solicitation,” engaging in sexual contact with an adult or a child during administration of the sacrament of confession.

34. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

35. Upon information and belief, not only was Defendant Diocese aware of sexual abuse of children, but it participated in covering up such heinous acts by moving errant priests and clergy members from assignment to assignment, thereby putting children in harm's way.

36. Prior to the time of Plaintiff's abuse Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Diocese and elsewhere in the Roman Catholic Church, and knew that there was a specific danger of child sex abuse for children in their institutions and programs.

37. The sexual abuse of Plaintiff described above was foreseeable.

38. Prior to the time of Plaintiff's abuse by Fr. Freeman and Fr. Mach, Defendants knew or should have known of acts of child sexual abuse by each of these individuals.

39. In March, 2018, the Diocese admitted publically that both Fr. Freeman and Fr. Mach were among the many Diocesan priests "with substantiated claims of sexual abuse of a minor."

40. In fact, Freeman admitted to sexually violating children in at least five of his six ministry assignments, which began in 1972.

41. Nevertheless, the Diocese never notified law enforcement officials of Fr. Freeman's and/or Fr. Mach's illegal activities, and, upon information and belief, permitted each of them to remain in active ministry for years despite knowing of their predatory and criminal behavior.

42. The conduct alleged herein would constitute a sexual offense as defined in article one hundred thirty of the penal law.

43. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities posed to minor children, the risk of abuse in general, and the risks that Fr. Freeman and Fr. Mach posed to Plaintiff.

44. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited parents and their children to join Sacred Hearth Parish and participate in services and activities at Sacred Heart Church; they undertook custody of minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they held out their agents, including Fr. Freeman and Fr. Mach as safe to work with and around minors, they encouraged parents to have their children spend time with their agents; and/or authorized their agents, including Fr. Freeman and Fr. Mach to spend time with, interact with, and recruit children.

45. Defendants owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

46. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

47. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and continues to suffer loss of spirituality; has suffered and will continue

to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged.

COUNT I

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

48. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

49. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of its clergy, including Fr. Freeman and Fr. Mach, so as to protect minor children, including Plaintiff, who were likely to come into contact with, and/or under the influence or supervision of them, and to ensure that Fr. Freeman and Fr. Mach did not use their assigned positions to injure minors by sexual assault, contact or abuse.

50. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Fr. Freeman and Fr. Mach, failed to properly investigate their background and employment history, and/or hired, appointed and/or assigned Fr. Freeman and Fr. Mach to Defendant Sacred Heart when Defendants knew or should have known of facts that would make them a danger to children; and Defendants were otherwise negligent.

51. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Freeman and Fr. Mach, failed to monitor their activities, failed to oversee the manner in which they carried out the duties to which Defendants assigned them, even though they knew or should have known that Fr. Freeman and Fr. Mach each posed a threat of sexual abuse to minors; allowed the misconduct described above to occur; failed to investigate Fr.

Freeman and Fr. Mach's dangerous activities and remove them from their premises; and Defendants were otherwise negligent.

52. Fr. Freeman would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Fr. Freeman.

53. Fr. Mach would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Fr. Mach.

54. At all relevant times, Fr. Freeman and Fr. Mach acted in the course and scope of their employment with Defendants.

55. Defendants' aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

56. Plaintiff suffered grave injury as a result of the foregoing sexual abuse and misconduct, including physical, psychological and emotional injury as described above.

57. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT II

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

58. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

59. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy working in the Diocese, including Fr. Freeman and Fr. Mach, did not pose a risk and/or that they did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

60. Defendants knew or should have known this representation was false and that employing Fr. Freeman and Fr. Mach and giving them unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

61. Defendant Diocese maintained a policy and practice of covering up criminal activity committed by clergy members within the Diocese.

62. Over the decades, this “cover-up” policy and practice of the Diocese resulted in the sexual assault of untold numbers of children, and put numerous other children at risk of sexual assault.

63. Defendants failed to report multiple allegations of sexual abuse by their employees, agents and representatives, to the proper authorities, thereby putting children at risk of sexual assault.

64. Upon information and belief, Defendants covered up acts of abuse by Fr. Freeman and Fr. Mach, and concealed facts concerning their sexual misconduct from Plaintiff and his family.

65. By failing to disclose the identities, histories and information about sexually abusive clergy in their employ, Defendants unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

66. Defendants failed to warn Plaintiff and his parents that Fr. Freeman and Fr. Mach each posed a risk of child sexual assault.

67. The conduct of Defendants as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children, and to the fact that Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

68. Defendants' aforesaid actions were negligent, reckless, willful and wonton in their disregard for the rights and safety of children, including Plaintiff.

69. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

70. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

COUNT III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

71. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

72. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

73. Defendants' aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused him to fear for his own safety.

74. Defendants knew or disregarded the substantial probability that Fr. Freeman and/or Fr. Mach would cause severe emotional distress to Plaintiff.

75. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

76. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT IV

PREMISES LIABILITY

77. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

78. At all relevant times, Defendants owned, operated, and /or controlled the premises of Defendant Sacred Heart, including the areas where the sexual abuse of Plaintiff occurred.

79. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

80. Defendants had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

81. Defendants willfully, recklessly, and negligently failed to provide a reasonably safe premises that were free from the presence of sexual predators and/or the assault by the occupants of the premises, including Fr. Freeman and Fr. Mach. Defendants thereby breached their duty of care to Plaintiff.

82. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

83. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT V

BREACH OF FIDUCIARY DUTY

84. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

85. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants. The entrustment of Plaintiff to the care and supervision of the Defendants while Plaintiff was a vulnerable child, imposed upon Defendants a fiduciary duty to act in the best interests of Plaintiff.

86. Defendants were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

87. By reason of the foregoing, Defendants breached their fiduciary duties to Plaintiff.

88. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

89. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT VI**BREACH OF DUTY IN LOCO PARENTIS**

90. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

91. At all relevant times, Plaintiff was a vulnerable child entrusted to Defendants' care, and was under the supervision and control of Defendants, such that Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

92. By reason of the foregoing, Defendants breached their duties to act *in loco parentis*.

93. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

94. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

COUNT VII**BREACH OF STATUTORY DUTIES TO REPORT**

95. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

96. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

97. Defendants breached their statutory duty by failing to report reasonable suspicion of abuse by Fr. Freeman and by Fr. Mach of children in their care.

98. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

99. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, together with interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

100. Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: New York, New York
September 9, 2019

Yours, etc.

FANIZZI & BARR, P.C.



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